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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Committee against Torture**

## Communication No. 514/2012

**Decision adopted by the Committee at its fifty-third session (3–28 November 2014)**

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| *Submitted by* | Dégratias Niyonzima, represented by Track Impunity Always (TRIAL) |
| *Alleged victim* | The author |
| *State party* | Burundi |
| *Date of complaint* | 23 July 2012 (initial submission) |
| *Date of the present decision* | 21 November 2014 |
| *Subject matter* | Torture committed by police officers; failure to investigate; lack of redress |
| *Procedural issues* | Examination of the same matter under another procedure of international investigation or settlement; exhaustion of domestic remedies |
| *Substantive issues* | Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent torture; systematic review of arrangements for custody and treatment of detainees; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right of complaint; right to redress; prohibition on the use of statements obtained under torture as evidence in proceedings |
| *Articles of the Convention* | Articles 2 (para.1), 11, 12, 13, 14 and 15, read in conjunction with articles 1 and 16 of the Convention; article 22 (para. 5 (a) and (b)) of the Convention |

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# Annex

## Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

## Communication No. 514/2012

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|---|---|
| *Submitted by* | Déogratias Niyonzima, represented by Track Impunity Always (TRIAL) |
| *Alleged victim* | The author |
| *State party* | Burundi |
| *Date of communication* | 23 July 2012 (initial submission) |

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 21 November 2014,

*Having concluded* its consideration of communication No. 514/2012, submitted to the Committee against Torture on behalf of Déogratias Niyonzima under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant, his counsel and the State party,

*Adopts* the following:

## Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Déogratias Niyonzima, a national of Burundi born on 3 March 1956. He claims to be the victim of violations by the State party of articles 2 (para. 1), 11, 12, 13, 14 and 15, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention. He is represented by counsel.

1.2 On 30 July 2012, in application of rule 114, paragraph 1 (formerly rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee asked the State party effectively to prevent any threats or acts of violence against the complainant and his family, in particular for having submitted this complaint, while the complaint was being considered.

### The facts as presented by the complainant

2.1 The complainant was General Secretary of the Parti pour la réconciliation du peuple (People's Reconciliation Party – PRP). On 1 August 2006, upon leaving his house in the Kabondo district of Bujumbura at around 7 a.m. to accompany his wife to work, he found a group of some 20 police officers outside the gate, armed with rifles and in firing position, deployed in front of two police vans with their revolving lights on. The police stopped him without giving a reason. The complainant asked to see the arrest warrant against him, but he

was shown only a search warrant issued by an authority without the proper competence, and a wanted notice.

2.2 The complainant was then taken to the headquarters of the National Intelligence Service, where he also found the former Vice-President of Burundi, Alphonse-Marie Kadege. He remained at the Intelligence Service premises until about 11 a.m. and was then taken home for a search to be made. The search was conducted by two officers of the Intelligence Service, but no valid warrant was produced. The police confiscated books, documents used by the complainant in the Arusha peace negotiations and other property that was never returned to him. At that time the complainant was still unaware of the reason for his arrest and the house search.

2.3 After the search, at around 2.30 p.m. the same day, the complainant was taken back to the Intelligence Service offices. He was taken straight to the office of the Deputy Administrator-General of the Intelligence Service, Colonel Léonidas Kiziba, who questioned him on his alleged part in preparing a coup d'état and a plan to assassinate the President, Pierre Nkurunziza. The Colonel behaved in a threatening manner, demanding that the complainant "tell him everything or he would get a beating". As the complainant denied any involvement, the Colonel ordered two plain-clothes intelligence officers to take him into another room for a beating.

2.4 The complainant was taken into a small room, where the Administrator-General of the Intelligence Service, Major-General Adolphe Nshimirimana, told him that he should tell all or risk being subjected to considerable pain. With that, and without waiting for a reply, the Administrator-General left the room and Colonel Léonidas Kiziba came in with an intelligence officer whose main task would be to film and photograph the torture sessions. The Colonel then ordered two intelligence officers to begin the interrogation. The complainant was asked to admit that he attended a meeting in Ruyigi to organize a coup d'état against the President, and to give the names of his accomplices. When the complainant denied any involvement, the Deputy Administrator-General ordered six intelligence officers to come in. Some were in uniform, some in plain clothes. All of them had instruments of torture of various kinds: steel chains, iron bars, weighted ropes, tiny chains with pointed ends, batons and other instruments. The Administrator-General of the National Intelligence Service then ordered his men to torture the complainant. Major Jean Bosco Nsabimana, known as "Maregaregare", hit him on the shoulder blades with a plank. The complainant, lying on the floor, was then beaten for 10 minutes on the toes, legs and forearms with the various instruments the torturers had brought with them. He tried to protect his genitals, which the officers tried to hit several times during the beating. He also received violent blows to the back.

2.5 Whenever the beating became so violent that it might prove fatal to the complainant, a brief halt was called, after which the interrogation and torture resumed with even greater ferocity. The Deputy Administrator-General asked the complainant about a meeting he attended, allegedly held — on an unspecified date — at the home of the former President, Domitien Ndayizeye. When the complainant again denied any involvement, the Administrator-General asked a Mr. Alain Mugarabona to come in, who stated that he had seen the complainant at that meeting. After this statement, the Intelligence Service officials beat the complainant again, hitting him very hard with hoses on the lower back, which made him feel as though he was being cut in two. He was beaten so hard that his toes, legs, forearms and back bled. The torturers were egged on by other intelligence officers, who were laughing at what was going on. When he was about to pass out, another break was ordered.

2.6 The questioning then continued, this time on the subject of the "Kampala Club", about which the complainant said he knew nothing, which prompted another beating. He was screaming with pain and spitting blood. At that point, the Deputy Administrator-

General told Maregaregare to give the complainant "the bread", namely, a filthy stone placed in the mouth to stifle the victim's cries. The officers held the complainant's head still and forced his mouth open to put in the stone. At the same time, they gave him a blow to the spine with a hose. The complainant spat the stone out, so Maregaregare brought in a plastic bag full of excrement in which to put the stone. This prospect made the complainant admit to everything of which he was accused, and a series of questions were put to him to get him to admit to his involvement in the coup d'état, to all of which he answered in the affirmative. With that, the torture session finished and the complainant signed a statement attesting to his involvement in the alleged attempted coup d'état. The 3 hours of agony inflicted on the complainant during the torture session had been filmed by an intelligence officer, thereby compounding the humiliating and degrading nature of the physical suffering.

2.7 No longer able to stand, half unconscious and covered in blood, the complainant was put in one of the Intelligence Service cells adjoining the torture chambers, measuring 4 by 6 metres, in which 16 other detainees who had also been tortured were being held. The detainees slept side by side on the floor. At first, they were served disgusting food consisting of beans and rice crawling with insects. Once the complainant's detention and that of other political figures was reported and the news got out,[1] he was allowed to receive food from his wife. There were no washing facilities in the cell. All the detainees had to use one toilet that was in an appalling state, which gave rise to serious health problems. They had to get their drinking water from a single outside tap. Conditions overall were very damp, a potential breeding ground for malaria mosquitoes. He received no treatment during this period and was unable to speak to a lawyer. He was detained in these conditions for a week.

2.8 On the evening of his arrest, 1 August 2006, the complainant had a visit from his wife and his lawyer, Mr. Isidore Rufyikiri, as a result of an error on the part of the warder, who did not know that visits were strictly prohibited. The duty officer went to get the applicant from his cell and hauled him to the main entrance of the Intelligence Service headquarters. The complainant's wife was thus able to see the signs of torture and to alert the media and human rights organizations.

2.9 On 2 August 2006, Mr. Isidore Rufyikiri (now President of the Bar Association) wrote to the Administrator-General of the Intelligence Service expressing his concern about the health of one of his clients, who had been arrested at the same time as the complainant and also been subjected to torture, whereupon he was himself arrested and detained in a cell in the Intelligence Service. He was thus able to see for himself the complainant's extremely worrying condition. Mr. Rufyikiri gives the following testimony:

> "He [Dégratias Niyonzima, the complainant] was arrested on 1 August 2006. On 3 August 2006, I joined him in the cells and could see him not far away through the window, moving with great difficulty because of the torture he had undergone: he could not stand by himself and always had to lean on a fellow prisoner in better shape … his body was weak from the blows with metal bars, his legs, feet and toes were terribly swollen and had fresh wounds in many places."[2]

2.10 The day after his arrest, 2 August 2006, the complainant was again interrogated about meetings to prepare the coup d'état in which he had allegedly been involved. He denied any involvement, and a witness was called to get him to confess. The witness, however, although he had testified against the complainant the day before, went back on his statements and said that the complainant had not attended any meetings to plan the coup d'état. The complainant was taken back to his cell.

[1] The complainant does not give a date.

[2] Testimony of Mr. Isidore Rufyikiri placed on file (4 April 2012).

2.11 On the third day of detention in the Intelligence Service cells, the complainant received a visit from members of the Ligue Iteka, a Burundian human rights association, who noted that he had been subjected to torture. Alerted by numerous reports, the Minister for National Solidarity, Human Rights and Gender, Françoise Ngendahayo, personally visited the Intelligence Service headquarters on 3 August 2006. She made the following statement to the media:

> "I went to see the arrested persons ... They told me they had been beaten and I could see that they had. I asked the Director of the Intelligence Service (*Documentation nationale*) to put a stop to it."[3]

2.12 No action was taken, however. Following the visit of the Ligue Iteka, a public statement signed by 10 human rights organizations and condemning the arrest of political figures by the Intelligence Service was sent to the Burundian authorities on 4 August 2006. The statement said that the visits made by the Ligue Iteka, detainees' families and the Minister for National Solidarity, Human Rights and Gender had confirmed that three individuals, including the complainant, had been subjected to torture. It further stated that "the defendants are not permitted to see lawyers or doctors".

2.13 On 9 August 2006, after a week in detention in the Intelligence Service cells, the complainant was brought before the public prosecutor of Bujumbura Mairie and formally charged with involvement in an attempted coup d'état. He was then transferred to Mpimba central prison. Despite repeated requests, he was not allowed to see a doctor. It was only on 1 September 2006, following a request by his lawyer for an expert opinion, that he was transferred to the Kamenge military hospital and examined by a government doctor, and received the treatment he needed. A specialist medical certificate was issued, attesting to the torture, indicating numerous unhealed injuries on the legs, feet, back and lower back, right shoulder, left hip and both arms, and concluding that "the individual concerned has recently been subjected to beatings and intentional injury by one or more straight instruments. The profusion of lesions of the same kind over almost the entire body is reminiscent of torture".[4] The investigating judge, despite having agreed to the expert examination, took no action on the findings in the medical report and no investigation into the case was opened.

2.14 The complainant was detained for more than 5 months at Mpimba prison in appalling conditions that were exacerbated by overcrowding, with serious consequences for the prisoners' health and safety. The complainant shared a small 3 by 5 metre cell, with no window or ventilation despite the suffocating heat, with the former President Domitien Ndayizeye and one other prisoner. He had to sleep on a small makeshift wooden bed put together by other prisoners, so as not to sleep on the floor. The cell had a kind of toilet-shower, but there was water only between 3 and 4 a.m. The dust in the air gave the complainant a sinus infection that later necessitated two surgical operations on his nose. He also caught malaria. Water, food, medicines and bedding were provided exclusively by his family throughout his detention.

2.15 Although a decision to release him on bail was taken by the Council Chamber on 6 October 2006, it was never implemented and the complainant remained in detention without legal grounds until he was released on 16 January 2007, having been acquitted the

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[3] Agence France-Presse (AFP), "Preparation d'un coup d'etat: les personnes arrêtées 'battues'" (Arrested and "beaten" for planning a coup d'etat), 4 August 2006 (article in *Burundi Bwacu*).

[4] Medical examination dated 1 September 2006, report in the file. The complainant explains that an expert examination can be requested by the investigating judge ex officio or at the victim's request. In the present case, the request was sent to a government doctor who, after conducting the examination, sent his report back to the investigating judge in a sealed envelope.

previous day for lack of evidence in the proceedings against him and several others for an attempted coup d'état.

2.16 The day after his release, the complainant and his family started receiving death threats and were placed under close surveillance. Their car was followed regularly by persons identified as agents of the Intelligence Service. They also received anonymous telephone threats. After all the political figures charged in the case had been acquitted, the President stated publicly that all the officers who had tortured the prisoners would have to answer for their actions in court. According to the complainant, this made his torturers fearful, which explained the threats. He also says that they have never been brought to justice to answer for their actions.

2.17 In the face of dire threats, the complainant fled to Kenya on 1 February 2007. His family left Burundi a few days later. The family applied to the Office of the United Nations High Commissioner for Refugees (UNHCR) for refugee status and this was granted in 2007. Procedures for resettlement in a host country were set in motion by UNHCR and in November 2008 the complainant and his family were able to move to the United States as refugees. Their financial situation is precarious and they do not know what the future holds.

2.18 The abuse suffered by the complainant has had lasting effects on his health. He still has pain in the lumbar region, which requires continuous medication. He has also completely lost his sense of smell, which for him is a severely traumatic handicap, and despite two operations on his nose the doctors believe the damage is irreparable.

2.19 Several formal complaints were lodged about what happened to the complainant. The day after his arrest, his lawyer wrote to the Administrator-General of the Intelligence Service, with a copy to the President, informing him of his concerns about acts of torture inflicted on one of his clients, another detainee arrested at the same time as the complainant. A complaint was also filed with the Office of the Attorney General on 17 August 2006, followed by a medical certificate dated 1 September 2006 attesting to torture (see para. 2.13 above). Alerted by the families of those arrested at the same time as the complainant, as well as by human rights organizations, the Minister for National Solidarity, Human Rights and Gender went to the Intelligence Service on 3 August 2006 to look into the case herself.

2.20. In addition, when the complainant was arrested the facts were brought to the attention of government and administrative authorities by a number of national and international human rights organizations, notably by means of a call for urgent action by Amnesty International on 3 and 4 August 2006 and by the World Organization against Torture (OMCT) on 7 August 2006. On 4 August 2006, a coalition of 10 human rights organizations based in Burundi, among them the Office of the High Commissioner for Human Rights in Burundi, adopted a statement publicly condemning the arrest and detention of several people, including the complainant, who was specifically named in the statement. The United Nations Working Group on Arbitrary Detention and Special Rapporteur on the question of torture also took joint action in an urgent appeal on 10 August 2006 on behalf of the complainant. The complainant also refers to the conclusions and recommendations adopted by the Committee following its consideration of the initial report of the State party in 2007, in which it called on the authorities to "conduct an immediate and impartial inquiry pursuant to reports that several of the persons detained for allegedly attempting a coup were subjected to torture".[5]

2.21 The complainant also emphasizes that, at every stage of the judicial proceedings, his lawyer had challenged the probative value of the confessions signed under torture and on 30 August 2006 had appealed against the order confirming pretrial detention issued by the Supreme Court on 24 August 2006. This appeal has never been considered, yet the request

[5] CAT/C/BDI/CO/1 (15 February 2007), para. 12.

for an extension of detention submitted to the Court by the Attorney General's Office was duly considered. In December 2006, the complainant's counsel again described the acts of torture undergone by his client and requested the application of article 27, paragraph 3, of the Code of Criminal Procedure to void the confessions obtained from the complainant under duress. In his argument before the Supreme Court, counsel for the complainant also told of the torture inflicted and called for his acquittal. Thus, the Burundian authorities were informed repeatedly, formally and informally, of the torture suffered by the complainant and could not therefore have been unaware of it. However, six years after the incidents took place,[6] no action has been taken on the complaint. The complainant points out that complaints of torture filed by other victims arrested under the same circumstances have not been investigated. He further states that the shortcomings of the judicial system and the risks to his physical integrity (which forced him into exile) prevented him from taking other steps to assert his rights.

2.22 The complainant therefore submits: (i) that available domestic remedies have given him no satisfaction, as the authorities have not responded to his complaints made since 17 August 2006 (para. 2.19), whereas they should have opened a criminal investigation on the basis of such allegations; (ii) that these remedies have been unreasonably prolonged since, six years after the incidents took place, the complainant has still not been heard and, further, that the shortcomings of the judicial system and the patent lack of independence and impartiality of the courts compound the inaccessibility of remedies;[7] and (iii) that it was dangerous if not impossible for him, because of his forced exile, to take any other steps. He recalls the threats he received after his release from prison in January 2007 (para. 2.16). Compelled by the national security services to flee his country and forced into exile, it is now impossible for him to initiate other proceedings in Burundi.

**The complaint**

3.1 The complainant claims to have been the victim of violations by the State party of articles 2 (para. 1), 11, 12, 13, 14 and 15, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention against Torture.

3.2 The complainant claims that the ill-treatment meted out to him caused acute pain and suffering and constituted torture[8] within the meaning of article 1 of the Convention. The Intelligence Service officers — agents of the State armed with instruments of torture — repeatedly beat him to the verge of unconsciousness in order to make him confess. This suffering was without any doubt inflicted intentionally, as evidenced by the filthy stone placed in his mouth to stifle his cries and the fact that the torture was filmed.

3.3 The complainant adds that the State party has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture in Burundi, contrary to its obligations under article 2, paragraph 1, of the Convention. The acts of torture against him, as well as against others arrested at the same time, remain unpunished. He never received any medical treatment, despite having explicitly requested it and despite the fact that his condition undeniably required medical care. In addition, even though he was mistakenly permitted a visit from his wife and his counsel on the evening of his arrest, he was allowed no further visits thereafter and was thus deprived of his right to contact his family and receive prompt legal assistance. Meanwhile, there are still legal obstacles in the way of effectively preventing and halting the practice of torture. In particular, there is no provision

[6] At the time of submission of the communication to the Committee.

[7] The complainant refers, in particular, to the continuation of his detention despite the Supreme Court's decision of 6 October 2006 concerning his release on bail (see para. 2.15 above).

[8] The complainant refers, among others, to communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3.

of law explicitly rejecting the validity of confessions obtained under torture, and article 27 of the Code of Criminal Procedure requires only that "if it is proved that confessions of guilt have been obtained under duress, they shall be null and void". In addition, the complainant points out that in Burundian law, apart from the special circumstances of war crimes, crimes against humanity and crimes of genocide, acts of torture committed outside these specific contexts are subject to a statute of limitations of 20 or 30 years depending on the circumstances.[9]

3.4 The complainant further argues that the Burundian authorities failed to properly monitor the treatment he received while in detention in the Intelligence Service cells and that his detention took place outside the framework of the law. His arrest was not made on the basis of a valid warrant; he was not informed of the charge against him until his transfer to Mpimba prison on 9 August 2006, when an arrest warrant was issued by the public prosecutor; his detention conditions were appalling; he had no contact with a lawyer during his detention at Intelligence Service headquarters; and the continuation of his detention despite the Supreme Court decision of 6 October 2006 on his release on bail rendered his detention arbitrary. In addition, there is no system of effective, systematic monitoring of places of detention. Ultimately, the practices of the Burundian authorities, in particular the Intelligence Service, in respect of persons deprived of their liberty do not conform to the requirements of article 11 of the Convention.

3.5 The Burundian authorities, despite being duly informed of the facts by various means and on many occasions, carried out no prompt and effective investigation into the allegations of torture, in violation of their obligation under article 12. The complainant also points out that Burundian criminal law does not oblige prosecutors to prosecute perpetrators of torture or even to order an investigation.[10] No action was taken on the complaint submitted by the complainant, even though it was supported by sound evidence resulting from an expert examination.

3.6 The complainant also invokes article 13 of the Convention, arguing that no inquiry was opened into his allegations, despite the filing of a formal complaint on 17 August 2006 for acts of torture, supported by an expert medical examination. The case was thus not considered immediately and impartially. In addition, the complainant's counsel was himself thrown into prison after having reported the torture suffered by one of his clients, who had been arrested in the same circumstances as the complainant; according to counsel, this amounts to an act of intimidation against the victims in the case and against their counsel for raising legitimate fears concerning their safety. The threats against the complainant and his family were stepped up after his release on 16 January 2007, in order to stop him lodging a complaint for the torture he had undergone. In conclusion, the complainant submits that the State party did not ensure his right to bring a complaint and to have his allegations examined promptly and impartially, in violation of article 13 of the Convention.

3.7 The complainant also submits that the Burundian authorities have not complied with their obligations under article 14 of the Convention. Not only do the crimes against him remain unpunished, but he has received no compensation for the torture he suffered. Having been a victim of arbitrary detention as well as torture at the hands of agents of the State, he believes he has suffered non-material injury for which he should receive compensation, in

[9] Criminal Code of Burundi, art. 150.

[10] The complainant refers to the Committee's recommendation in this regard, that the State party should make clear "the obligation of the competent authorities to institute, systematically and on their own initiative, impartial inquiries wherever there are reasonable grounds to believe that an act of torture has been committed" (CAT/C/BDI/CO/1, para. 22).

addition to compensation for the material injury caused.[11] By depriving him of criminal proceedings, the State party has deprived the complainant of his principal legal means of obtaining compensation. Furthermore, given the passivity of the judicial authorities, other remedies to obtain redress, through a civil suit for damages, for example, have no realistic prospect of success. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in the conclusions and recommendations adopted following its consideration of the State party's report in 2007.[12] He recalls that the State party's obligation to ensure that redress is obtained includes, but is not limited to, the provision of compensation for the harm suffered, and must also include the adoption of measures to ensure non-repetition, notably through the imposition on the perpetrators of penalties commensurate with the gravity of the acts. This involves, first and foremost, opening an investigation and prosecuting those responsible.[13] In the case of the complainant, the crime committed against him remains unpunished, as his torturers have not been convicted, prosecuted, investigated or affected in any way at all, which is a violation of his right to redress under article 14 of the Convention.

3.8 Under article 15, the complainant recalls that the torture sessions he underwent were intended to make him confess his involvement in preparing an alleged coup d'état. The abuse stopped as soon as he signed a statement admitting his supposed guilt. Only on the basis of those confessions could judicial proceedings be brought against him, for without them there would be no grounds for the charge against him (preparing a coup d'état). Although the authorities were aware that they had been obtained under torture, the statements were never declared null and void. On the contrary, they were used to keep the complainant in detention for more than 5 months, in violation of the provisions of article 15 of the Convention.

3.9 The complainant repeats that the violence inflicted on him was torture, in accordance with the definition in article 1 of the Convention. However, and alternatively, even if the Committee were not to characterize it as such, the abuse suffered by the victim in any case constitutes cruel, inhuman or degrading treatment and accordingly the State party was obliged, under article 16 of the Convention, to prevent and punish the commission or instigation of, or acquiescence in, these acts by public officials. Furthermore, the complainant recalls the conditions of custody that he had to endure for his five and half months of detention, first in the Intelligence Service cells, then in Mpimba prison. These two places of detention are characterized by overcrowding[14] and insanitary conditions (see paras. 2.7 and 2.14 above). He refers again to the Committee's conclusions and recommendations, in which it noted that conditions of detention in Burundi "amount to inhuman and degrading treatment".[15] Lastly, he recalls that he received no medical care while in detention in the Intelligence Service cells, despite his critical condition, and therefore concludes that the conditions of detention he experienced constitute a violation of article 16 of the Convention.

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[11] The complainant refers to a decision of the International Court of Justice, case concerning Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), Judgment of 19 June 2012.

[12] CAT/C/BDI/CO/1, para. 23.

[13] The complainant refers, among others, to communication No. 212/2002, *Urra Guridi v. Spain*, decision adopted on 17 May 2005, para. 6.8. He adds that his contention is in line with the jurisprudence of the Human Rights Committee (*Bautista Arellana v. Colombia*, communication No. 563/1993, 23 October 1995, para. 8.2; *Colonel et al. v. Colombia*, communication No. 778/1997, 24 October 2002, para. 6.2), and of the European Court of Human Rights (*Assenov v. Bulgaria*, 90/1997/874/1086, 28 October 1998, paras. 102 and 117; and *Aksoy v. Turkey*, 100/1995/606/694, 18 December 1996, para. 90).

[14] In May 2011, according to a source cited by the complainant, Mpimba prison held more than 4,000 detainees, whereas its maximum capacity is 800.

[15] CAT/C/BDI/CO/1, para. 17.

**State party's observations on admissibility and the merits**

4.1 On 2 December 2013, the State party submitted its observations on the admissibility and merits of the communication. The State party first contests its admissibility, arguing that the complainant has not exhausted domestic remedies, since a complaint of torture lodged on 22 August 2006 with the Attorney General's Office is still pending. An investigating judge has been assigned to the case. In order to establish the complainant's degree of physical incapacity, the judge decided to seek sworn expert testimony from a doctor approved by the Government of Burundi, in accordance with the Code of Criminal Procedure and with article 12 of the Convention.[16]

4.2 The State party maintains that the communication is abusive. Although the information presented to the Committee is correct, the complainant seems to have political motives. He was not deprived of a fair trial and the judicial authorities have never been passive. His case was closed when the Supreme Court handed down its judgement acquitting him.

4.3 As to redress for injury and rehabilitation, the State party says that it is favourable to the idea of using available means to meet this obligation. It also points out that the other accused, who stayed in Burundi, are now in senior positions in the Senate and the National Assembly. The State party therefore considers that the complainant's claims in respect of redress and rehabilitation should be dismissed.

4.4 As to the grounds for his detention, the State party recalls that criminal proceedings were brought against the complainant in 2006 and that he was arrested in that context on suspicion of committing or aiding and abetting two serious offences, namely, attempted violation of internal State security and attempted conspiracy to harm persons and property. He was ultimately acquitted by the Supreme Court of Burundi. The State party submits that the release of a person who has been unjustly detained constitutes protection of individual rights. The acquittal is proof of Burundi's firm commitment not to violate the rights of citizens by irregular and unlawful imprisonment. In conclusion, the State party rejects the complainant's claims and asks the Committee to declare them without merit.

**Complainant's comments on the State party's observations on admissibility and the merits**

5.1 On 6 February 2014, the complainant submitted his comments on the State party's observations. He rejects the contention that he has failed to exhaust domestic remedies and repeats that, more than seven years after the facts, no investigation has been opened, contrary to the State party's claims, which are unsubstantiated. Furthermore, even if an inquiry had been opened, it would not be an impediment to the admissibility of the communication, given the unreasonable length of time that has elapsed.[17] The complainant recalls all the legal steps he took, including the submission of a formal complaint of torture on 17 August 2006 to the Attorney General's Office, which remains unaddressed. In conclusion, the complainant submits that he cannot reasonably be expected to wait seven years and five months for the outcome of a purported investigation that has not been shown to have taken place.

[16] The State party refers to the medical report mentioned by the complainant, and to the related document placed on file by the complainant (see para. 2.13 above).

[17] The complainant refers to communication No. 8/1991, *Halimi-Nedzibi v. Austria*, decision adopted on 18 November 1993, para. 13.5, in which the Committee determined that a delay of 5 months before initiating an investigation into allegations of torture, which then failed to yield a result in two years, is unreasonably long and releases the complainant from the requirement to exhaust domestic remedies.

5.2 On the merits, the complainant repeats his earlier comments, adding that the State party has provided no argument showing a connection between his acquittal and the inappropriateness of the communication. He further submits that the outcome of the criminal proceedings against him does not make the torture he underwent any less criminal. Nor does his acquittal justify the lack of a prompt and impartial investigation by the authorities to verify the allegations of torture brought to their attention.

5.3 As to redress and rehabilitation, in the complainant's view it cannot be argued, as the State party is doing, that his acquittal in a criminal proceeding unrelated to the incident of torture justifies the lack of redress. In addition, the complainant notes that it is hard to see how the professional positions of others arrested at the same time as him — positions to which they were in fact elected — could be seen as a measure of rehabilitation in respect of the complainant.[15]

**State party's additional submission**

6.1 On 16 June 2014, the State party submitted additional comments. It repeats that the Attorney General's Office was duly informed by the complainant's counsel that a complaint had been registered against two members of the Burundian police in the Intelligence Service and that criminal proceedings have been brought against them. According to the State party, the Attorney General's Office cannot obtain sufficient information on the events in question or the nature of the alleged violations because the victim and his counsel are absent or unavailable and are thus not cooperating with the investigation. The complainant left the country before his complaint of torture was resolved. The State party adds that proceedings are still in progress and that the Burundian courts still have jurisdiction. The judge assigned to the case has been unable to interview the victim or the suspects for the record and it has not been possible to organize a judicial confrontation. Accordingly, the judge in the Attorney General's Office has not been able to complete the investigation and the case has not been referred to the criminal court for resolution. As a result, it has not been possible to pronounce sentence or order compensation. The State party therefore considers that the allegations will engage its responsibility only when they have been considered by the competent courts, and repeats that it is the complainant's own fault that the proceedings have been unreasonably lengthy.

6.2 On the merits, and with regard to the torture alleged by the complainant, the State party recalls that the medical examination showed that he had suffered bodily harm reminiscent of acts of torture, whereas the lesions observed under X-ray are more likely to be the result of a fall and cannot be explained by direct blows to the body. The State party adds that it is possible that the complainant has suffered physical pain, but it is for the competent judge to determine, on the basis of an expert examination, whether the pain is acute or not. The intentional nature of the acts must also be established. Moreover, those responsible for the acts of torture in question have not yet been formally identified. As the victim no longer lives in Burundi, it is now difficult if not impossible to establish whether these are the same injuries that affect his health today.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

7.1 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the case of Désgratias Niyonzima was reported to the Working Group on Arbitrary Detention

[15] The complainant attaches the report on a sinus operation he underwent in the United States in 2010.

and the Special Rapporteur on the question of torture in 2006. However, the Committee observes, firstly, that the mandate of the Working Group on Arbitrary Detention concerns, *ratione materiae*, the issue of arbitrary deprivation of liberty and not torture. With regard to the consideration of the case by the Special Rapporteur on the question of torture, the Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not constitute procedures of international investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention.[19] Accordingly, the Committee considers that the examination of Désiré Dégratias Niyonzima's case by these procedures does not render the communication inadmissible under this provision.

7.2 Secondly, the Committee observes that the State party challenges the admissibility of the communication on the grounds that the complainant has failed to exhaust domestic remedies, since a criminal proceeding for torture, brought on 17 August 2006, is still pending following the referral of the case to the Attorney General's Office. The Committee notes that the State party has indicated that an investigating judge has been assigned to the case, but it has provided no other information or detail which might help the Committee to ascertain what progress has been made and to judge how effective the investigation might be, despite the fact that the case was brought more than eight years ago. The Committee finds that, in the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective reparation can be initiated and that, in any event, the domestic proceedings have been unreasonably lengthy. Accordingly, the Committee considers that it is not precluded from considering the communication under article 22, paragraph 5 (b), of the Convention.

7.3 In the absence of any impediment to admissibility, the Committee proceeds to consideration of the merits of the claims submitted by the complainant under articles 1, 2 (para. 1), 11, 12, 13, 14, 15 and 16 of the Convention.

*Consideration of the merits*

8.1 The Committee has examined the complaint in the light of all information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee notes the complainant's claim that, on 1 August 2006, he was arrested by some 20 armed police, who did not produce an arrest warrant, and was taken to the headquarters of the National Intelligence Service. There, he was questioned under threat that he might be subjected to considerable pain. The Committee has further noted the complainant's allegations that, after he denied any involvement in an alleged coup d'état, Intelligence Service officials armed with various instruments of torture beat him until he was bleeding profusely and on the verge of unconsciousness; that they put a stone in his mouth to stifle his cries; that on the evening of his arrest, his wife and his lawyer were able to visit him and noted visible signs of torture; that a Minister of the State party's Government stated that she had personally seen that the prisoners at Intelligence Service headquarters showed signs of torture during her visit on 3 August 2006; that, despite his requests, the complainant received no medical treatment during his week-long detention at Intelligence Service headquarters; and that the beating he received caused acute pain and suffering and was administered intentionally with the aim of extracting a confession. The Committee notes that the State party does not dispute the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's

[19] See communication No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 5.1.

allegations must be taken fully into account and that the facts as presented constitute torture within the meaning of article 1 of the Convention.

8.3 The complainant also invokes article 2, paragraph 1, of the Convention, according to which the State party should have taken "all effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". The Committee notes that in this case the complainant was beaten, then detained for a week in Intelligence Service cells without legal grounds and without contact with either defence counsel or a doctor. The Committee recalls its conclusions and recommendations, in which it called on the State party to take legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment and to take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture.[20] In the light of the foregoing, the Committee finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.[21]

8.4 As to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claims that he was detained without legal grounds from 1 to 9 August 2006, when he was brought before the public prosecutor and formally charged with involvement in a coup d'état. Notwithstanding the fact that he filed a complaint on 17 August 2006 with the Attorney General's Office, that the complaint was supported by a medical certificate from a government doctor stating that he had probably been subjected to torture (para. 2.13) and that the facts were widely known and reported by various people, including a Minister of the Government of the State party (paras. 2.19 and 2.20), no investigation has been carried out, more than eight years after the events. The Committee considers that to delay so long before opening an investigation into allegations of torture is clearly unjustified. It also rejects the State party's argument that the lack of progress in the investigation can be put down to a lack of cooperation on the part of the complainant, who is not in the country. The Committee recalls the State party's obligation under article 12 of the Convention to proceed automatically to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. In this respect, the Committee finds a violation of article 12 of the Convention.

8.5 By failing to meet this obligation, the State party has also failed in its responsibility under article 13 of the Convention to ensure the right of the complainant to lodge a complaint, which presupposes that the authorities will provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.[22] In addition, the Committee notes that the complainant and his family were subjected to threats, and that his lawyer was arrested and imprisoned on 3 August 2006 after reporting the acts of torture inflicted on his client. The State party has not provided any information to refute this part of the communication. The Committee therefore also finds a violation of article 13 of the Convention.

8.6 As to the complainant's claims under article 14 of the Convention, the Committee recalls that article 14 not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee recalls that redress should cover all the harm suffered by the victim and encompasses, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of each case.[23] In the present case, the Committee notes the complainant's claim that he suffers from persistent

[20] CAT/C/BDI/CO/1, para. 10.

[21] See communication No. 503/2012, *Nukarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.3.

[22] Ibid., para. 6.4.

[23] Ibid., para. 6.5. See also *Bendib v. Algeria*.

pain in the lumbar region as a result of the ill-treatment he suffered and has had to have two operations on his nose; he also says that the torture has had lasting consequences, including the irreversible loss of his sense of smell. However, he has not benefited from rehabilitation measures. Although it welcomes the State party's statement of intent to meet its obligations of rehabilitation and redress, the Committee is of the opinion that the failure to conduct a thorough, prompt and impartial investigation denied the complainant any possibility of exercising his right to redress, as provided for in article 14 of the Convention.

8.7 With regard to article 15, the Committee has noted the complainant's claim that the judicial proceedings against him for an attempted coup d'état were brought on the basis of confessions that were extracted from him under torture, as certified by a medical examination. The State party has provided no argument to counter this claim. The Committee recalls that the general nature of the provisions of article 15 derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in a proceeding under its jurisdiction were not made under torture.[24] In this case, the Committee notes that, according to the complainant, the statements that he signed under torture served as the grounds for the charges against him and as justification for keeping him in detention for more than 5 months (from 1 August 2006 to 16 January 2007); that the ill-treatment was confirmed in an expert examination by a government doctor with a mandate from the investigating judge; that the complainant was acquitted on 15 January 2007 for lack of material evidence (para. 2.15); and that, through his counsel, he has disputed the probative value of the confession signed under torture at each stage of the proceedings against him, without success. The Committee notes that the State party has neither refuted any of these allegations nor included any information on this question in its observations to the Committee. The Committee considers that the State party was under an obligation to verify the substance of the author's claims that his confessions had been obtained under torture, and that by not carrying out such verification and by using those confessions in the judicial proceedings against the complainant, in which he was eventually acquitted, the State party violated its obligations under article 15 of the Convention.

8.8 Regarding the complaint under article 16, the Committee has taken note of the complainant's claim that he was detained from 1 to 9 August 2006 in a cramped cell at Intelligence Service headquarters which he shared with 16 other prisoners, in extremely insanitary conditions, and that he was refused access to a doctor, despite his request and his worrying state of health. He further claims that on 9 September 2006 he was transferred to Mpimba prison, which was insanitary and overcrowded. The manifest absence of any mechanism for monitoring the cells at Intelligence Service headquarters and Mpimba prison, where the complainant was detained, without doubt increased the risk of his being subjected to acts of torture. In the absence of any relevant information from the State party in this regard, the Committee concludes that the facts reveal a violation by the State party of its obligations under article 16, read in conjunction with article 11, of the Convention.[25]

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of article 2 (para. 1), read in conjunction with article 1, and of articles 12, 13, 14, 15 and 16, the latter read in conjunction with article 11, of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to launch an impartial investigation into the incidents in question, with a view to bringing those responsible for the victim's treatment to justice, and to inform it, within 90

[24] See communication No. 419/2010, *Kitti v. Morocco*, decision adopted on 26 May 2011, para. 8.8, and communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, para. 6.3.

[25] See *Nikarahera v. Burundi*, para. 6.6.

days from the date of transmittal of this decision, of the steps it has taken in conformity with the above conclusions, including adequate and fair compensation for the complainant, which includes the means necessary for his fullest possible rehabilitation.